

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

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In re:

Bed Bath & Beyond, Inc., *et al.*

Debtors.

Chapter 11

Case No. 23-13359-VFP

(Jointly Administered)

**OBJECTION BY LANDLORD CHENAL PLACE PROPERTIES, LLC TO
DEBTORS' PROPOSED ASSUMPTION AND ASSIGNMENT OF LEASE**

Chenal Place Properties, LLC (the "Landlord"), by and through its undersigned attorneys, hereby files its objection to the Notice of Successful and Backup Bidder with Respect to Phase 1 Auction of Certain of the Debtors' Lease Assets and Assumption and Assignment of Certain Unexpired Leases [Doc. No. 1114].

BACKGROUND

1. On April 23, 2023, the above captioned debtors (collectively, the "Debtors") filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code.
2. The Landlord owns real property consisting of a shopping center located at 12309 Chenal Parkway, Suite A, Little Rock, Arkansas, 72211 (the "Leased Property"), which has been leased to Bed Bath & Beyond, Inc. ("BBB") and operated by BBB as Store No. 228. The Agreement of Lease, as amended from time to time, is attached hereto as Exhibit A and incorporated herein by reference (the "Lease").
3. On June 27, 2023, the Debtors filed a Notice of Successful and Backup Bidder with

Respect to Phase 1 Auction of Certain of the Debtors' Lease Assets and Assumption and Assignment of Certain Unexpired Leases (the "Notice"). The Notice provides that the Lease covering the Leased Property is to be assumed and assigned to Aldi's for the sum of \$132,771.00 (Ex. A, No. 44). Moreover, the Notice indicates that the cure amount due the Landlord is \$0.00.

4. Landlord objects to the Notice. Section 365(b)(1)(A) and 365(f)(2)(A) govern the obligations of a debtor seeking court authority to assume or assign a lease. BBB has failed to comply with the requirements of these two sections by failing to provide for a cure and/or adequate assurances that BBB or Aldi's will cure said defaults.

5. After discussing the remaining outstanding balance of 2022 CAM with the Debtor, the parties have agreed that there is a current outstanding balance owing to Landlord for unpaid 2022 CAM in the amount of \$1,276.58. A copy of the statement evidencing the amount due the Landlord is attached hereto as Exhibit B and is incorporated herein by reference. BBB is required to show that this default amount will be cured prior to the lease being assumed and assigned.

6. In addition to curing the above stated debt, BBB is also required to cure its other defaults under the Lease.

7. Specifically, BBB has defaulted under the Lease by permitting a materialman's lien to be filed and encumber the Leased Property.

8. On December 22, 2022, Place Services, Inc. provided BBB with certain furnishing materials and labor that were used in the construction of the interior and exterior remodel of Store 228 located on the Leased Property and leased to BBB by Landlord pursuant to the Lease.

9. On January 19, 2023, Place Services, Inc. filed a materialman's lien against the Leased Property in the amount of \$44,202.21 based on the services contracted for by and provided to BBB. A copy of the materialman's lien is attached hereto as Exhibit C and is incorporated herein

by reference.

10. Pursuant to paragraph 55 of the Lease, BBB was required to discharge the materialman's lien within 30 days of the lien being filed.

11. Paragraph 55 of the Lease provides, "Within thirty (30) days after notice of the filing thereof, [BBB] shall discharge (either by payment or by filing of the necessary bond, or otherwise) any lien against the Premises and/or Landlord's interest therein, which may rise out of any payment due for, or purported to be due for, any labor, services materials, supplies or equipment alleged to have been furnished to or for [BBB] in, upon or about the Premises."

12. BBB has failed to comply with its obligations under Paragraph 55 of the Lease.

13. Paragraph 18 of the Lease provides BBB will have defaulted under the Lease if, "default should be made in any of the other covenants of this Lease on [BBB] part to be performed, and [BBB] does not cure such default on or before the thirtieth (30th) day after its receipt of written notice thereof from [L]andlord specifying the nature of such default."

14. On March 21, 2023, Landlord provided notice that BBB had defaulted under paragraphs 18 and 55 of the Lease by failing to discharge Place Service's Inc.'s materialman's lien from the Leased Property within 30 days of it being placed. A copy of the notice to BBB is attached hereto as Exhibit D and is incorporated herein by reference.

15. After receiving notice, BBB was required to have the materialman's lien discharged from the Leased Property on or before April 20, 2023.

16. BBB has failed to have the materialman's lien discharged and released from the Leased Property.

17. BBB defaulted under the terms of the Lease by failing to discharge the materialman's lien discharged from the Leased Property within 30 days of receiving notice of the

default.

18. Before assuming and assigning the Lease, BBB must either cure all its defaults under the Lease or provide adequate assurances that either BBB or Aldi's will promptly cure said defaults, including having the materialman's lien discharged and released from the Leased Property.

19. Landlord reserves the right to supplement, modify or amend this objection and make such other objections as may be necessary to any proposed assumption and assignment of the Lease.

WHEREFORE, Chenal Place Properties, LLC respectfully requests that the approval of the assumption of the Lease be conditioned upon the Debtor either promptly curing, or providing adequate assurances of a prompt cure, of the Debtor's defaults under the Lease, including discharging the materialman's liens on the Leased Property; and such other relief as the Court finds appropriate under the circumstances.

Respectfully submitted,

Greenbaum Rowe Smith & Davis LLP
Counsel to Chenal Place Properties LLC

/s/ David L. Bruck
David L Bruck

Dated: July 11, 2023